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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20540

*Handwritten signature and initials*

FILE: B-188179

DATE: November 29, 1977

MATTER OF: Suburban Industrial Maintenance Company-  
Reconsideration

**DIGEST:**

Agency may cancel IFB reinstated pursuant to prior GAO decision because wage determination contained in IFB was superseded by wage revision received by agency less than 10 days before bid opening. Compelling reason to cancel exists because in circumstances interests to be protected by Service Contract Act and GAO decisions require that latest revision be included in IFB.

Suburban Industrial Maintenance Company protests against the consideration by the Department of the Army, Aberdeen Proving Ground (Army) of bids other than those originally submitted under IFB No. DAA05-77-B-0005 and "requests clarification" of our decision, Suburban Industrial Maintenance Company, B-188179, June 28, 1977, 77-1 CPD 459, where we recommended reinstatement of that IFB. The background leading to the present protest is set forth in our earlier decision as follows:

"The IFB, which was issued on December 6, 1976 as a total small business set-aside, originally called for bids on nine line items of janitorial services for buildings at Aberdeen. Because of funding problems it was determined that bids should be solicited on two bases: (1) full performance in accordance with the original specifications, and (2) reduced service in accordance with an addendum to the specifications. Accordingly, Amendment No. 0001 was issued on December 17 which included, among other things, the alternate specification and provided that award would either be on the basis of the standard specification or the alternate specification. Subsequent to the issuance of Amendment No. 0001, the agency determined that an ambiguity existed in that the amended specification referred to reduced services for Schedule A-2 (item 0001AC of the 10 items on the revised bid schedule) whereas the

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revised bid schedule only provided for reduced services for Schedule A (item 0001AB in the revised bid schedule). Therefore Amendment No. 0002 was issued on January 3 extending the bid opening date to January 10 and instructing bidders to 'Delete Schedule A-2 wherever it appears in the attachment.'

"During the evaluation of the 31 bids received the Army discovered that 16 bidders, including Suburban, had apparently been confused, as their bid prices for items 0001AA (Full Service) and 0001AB (Reduced Service) were reversed. A higher price was bid on the Reduced Service in each case. Accordingly, letters requesting bid confirmation were sent to those bidders suspected of having made this error. Twelve of these bidders, including Suburban, requested that their prices be reversed while the lowest bidder requested that it be allowed to withdraw its bid because of another error. After a further review of the procurement the Army determined on February 3 that in view of the ambiguities which still apparently existed on the amended IFB the solicitation should be canceled and the request resolicited."

Suburban protested against the cancellation of IFB 0005 contending that the IFB clearly set forth the agency's requirements. Our Office held that the agency failed to justify cancellation of the IFB since any confusion which existed regarding the prices bid for items 0001AA and 0001AB appeared to have been corrected. Accordingly, we recommended that IFB 0005 be reinstated (the Army had resolicited the requirement under IFB DAA005-77-B-0019; however no award was made pursuant to that solicitation) and that award be made to the firm determined to be the low responsive responsible bidder under IFB 0005. On July 8, 1977 the contracting officer contacted all bidders who had originally responded to IFB 0005 and requested that they reinstate their bids as submitted. Seventeen of the original 31 bidders, including Suburban, responded by reinstating their original bids. By mailgram dated July 12, 1977 Suburban protested the award of a contract under IFB 0005 to any bidder other than itself because it maintained that the five lower bidders were nonresponsive and nonresponsible.

By letters dated July 26, 1977 to nine of the 17 bidders, who agreed to reinstate their bids, the contracting officer requested

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that they review their bids for possible error. Specifically, the letters indicated that the bids as submitted contained higher prices under item 0001AB than under item 0001AA while the frequency of performance under item 0001AB is less than under item 0001AA. Because of the wide disparity in bid prices letters were also sent to the other eight bidders requesting bid verification but not referring to items 0001AA and 0001AR. These bidders apparently bid in accordance with the Army's view of the IFB requirements.

Suburban's protest against the agency's actions under the reinstated IFB is based on the premise that the IFB as originally issued and amended is clear on its face (item 0001AA is for reduced service and item 0001AB for full service) and that only the bids as originally submitted may be considered. Suburban regards as improper the requests for verification under both attempts to procure the services using IFB 0005.

In its initial submission to our Office in connection with this protest the Army admitted that after further study it agrees with Suburban's position that item 0001AB requires full service while the reduced services are in fact required under item 0001AA. Accordingly, it appeared that the Army was stating that its original position was erroneous and that the letters it sent to the bidders indicating that a higher price should be bid on item 0001AA were incorrect. The Army seemed to be taking the position that the resulting confusion required that IFB 0005 again be canceled and the requirement resolicited.

In a subsequent submission the Army noted that the last wage rate determination which was incorporated into both IFB 0005 and 0019 was issued on September 14, 1976 and expired on October 31, 1977. In this regard the Army noted that negotiations have been completed between the union and the incumbent contractor and reported that hourly wage rate and fringe benefits as of November 1, would be increased. Subsequently, on November 18, 1977 the Department of Labor issued Wage Determination 73-235, Revision A which provides for a \$4.17 hourly rate plus fringe benefits. Accordingly, the Army concludes that both of the previously issued IFBs should be canceled and the procurement resolicited using the new hourly wage rate and fringe benefit increases which are incorporated in a new wage rate determination by the Department of Labor.

In this regard Suburban urges that Armed Services Procurement Regulation (ASPR) § 12-1005.3(a) (1976) clearly permits award based on an IFB containing a superseded wage determination when as in this case the wage determination is not available 10 days before bid opening.

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ASPR § 12-1005.3(a) provides that revised wage determinations received later than 10 days prior to bid opening shall not be effective if the contracting agency "finds that there is not a reasonable time still available to notify bidders of the revision." It has been held that contracting agencies cannot automatically ignore revisions received less than 10 days prior to bid opening but must make a positive finding as to the time available to notify bidders. International Union of Operating Engineers v. Arthurs, 355 F. Supp. 7 (W.D. Okla.), aff'd, 480 F. 2d 603 (10th Cir. 1973).

Our views on this subject are set forth in United Services Associates, Inc., B-187710, April 18, 1977, 77-1 CPD 267 wherein we stated:

"We have recognized that affording protection to service workers and thereby furthering the purpose of the Service Contract Act may be regarded as a compelling reason to cancel an IFB after bid opening in order to resolicit based on a revised wage determination. Square Deal Trucking Company, Inc., B-182436, February 19, 1975, 75-1 CPD 103. In addition, we have held that an IFB not containing the correct wage determination should be canceled and the requirement resolicited based on the correct wage determination. Dyneteria, Inc., 55 Comp. Gen. 97 (1975), 75-2 CPD 36, affirmed on reconsideration, Tombs & Sons, Inc., B-178701, November 20, 1975, 75-2 CPD 332. Moreover, we have held that the proper way to determine the effect of a change in the Government's specification is to compete the procurement under the new rates even where the wage rate change was effective after bid opening in a situation where a similar '10-day rule' was applicable. Dyneteria, supra. See also High Voltage Maintenance Corp., 56 Comp. Gen. (B-186286, December 9 1976), 76-2 CPD 473."

In view of our prior decisions concerning wage rate determinations and considering the confusion over the full service and reduced service requirements we believe that the Army would be justified in cancelling both IFBs and re-advertising the requirement. Suburban Industrial Maintenance Co., B-189027, September 15, 1977, 77-2 CPD 198.

Our prior decision, Suburban Industrial Maintenance Company, B-188179, June 28, 1977, 77-1 CPD 459, is accordingly modified.

Deputy

*R. J. K. 11*  
Comptroller General  
of the United States